

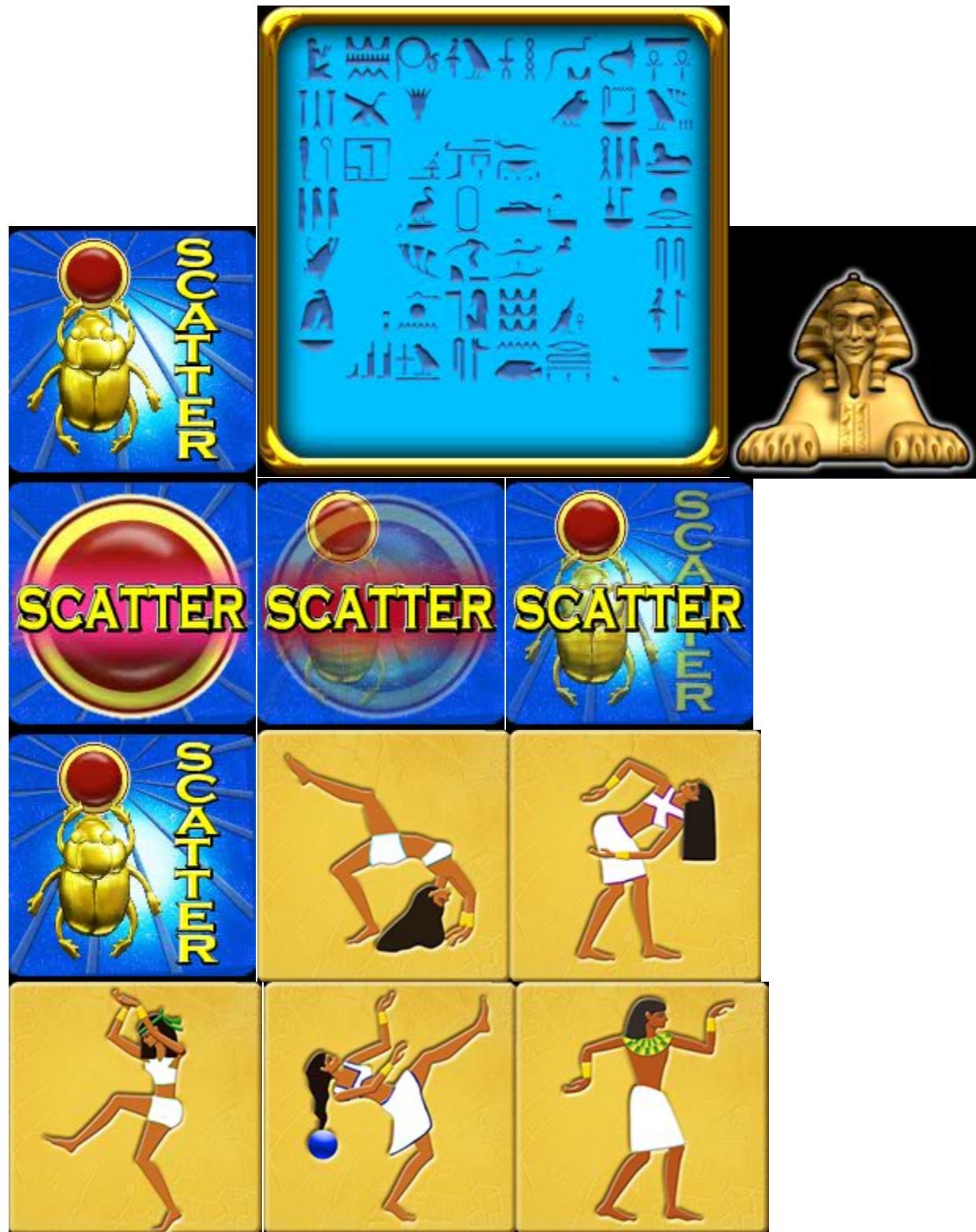
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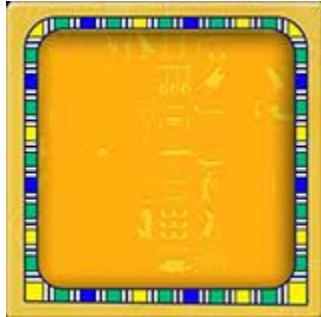
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j. Coyote Moon on the DDC Web App

4 The following is a selection of artwork that was downloaded by the Chrome browser to my
5 computer by the DDC Web App when I played the Coyote Moon slot machine game for the first
6 time:

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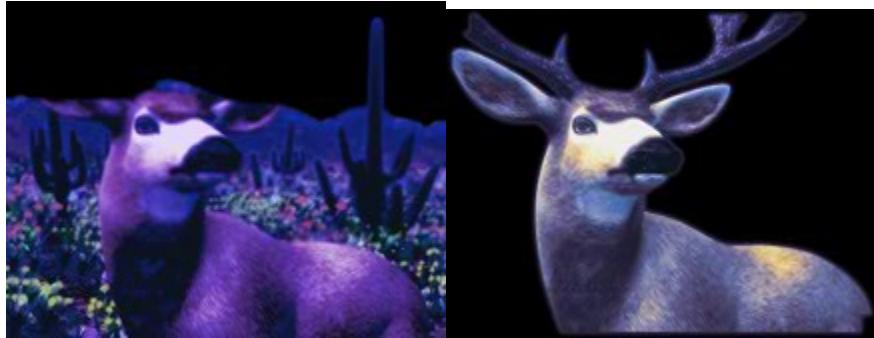
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2 k. Kitty Glitter on the DDC Web App

3 The following is a selection of artwork that was downloaded by the Chrome browser to my

4 computer by the DDC Web App when I played the Kitty Glitter slot machine game for the first time:

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March 30, 20181 **6. Copyright and Trademark Ownership Information Displayed in**
2 **DoubleDown Games with GC2 Content**3 **a. Copyright Information Displayed in the DDC Web App**4 I observed that a display of text stating information about copyright and trademark
5 ownership is included in the files offered by the DDC Media Server. In the case of the DDC Web
6 App, the copyright attribution information that is displayed to the player is contained within a
7 game-specific SWF file which is loaded in a player's Web browser when that slot machine game
8 launches. This SWF file is sent to the player's computer immediately before the rest of the game
9 is transmitted, and its contents are displayed as the rest of the game is downloaded.10 For example, for the Pharaoh's Fortune slot machine game on the DDC Web App, I
11 observed that a file called SplashPageSkin.swf is downloaded from the DDC Media Server as the
12 rest of the game is launching.¹⁰⁴ Figure 10 displays a screenshot of the Chrome Web browser as
13 the game loads. Below the Pharaoh's Fortune logo, which is GC2 Copyrighted Material, is text
14 which reads: "All trademarks are registered trademarks or pending trademarks of IGT and/or its
15 licensors in the U.S. and/or other countries. © 2014 IGT. All rights reserved." This copyright
16 notice precedes the display of the Pharaoh's Fortune game, which is GC2 Copyrighted Material.
17 The aforementioned copyright notice is conveyed to the player in an SWF file that is a component
18 of the approximately 25 SWF files that comprise the core of the game.

¹⁰⁴ At the time of this writing, SplashPageSkin.swf is being offered online at https://d-resource.doubledowncasino2.com/rgs/20171016/studios/saber/games/PharaohsFortune/assets/en/SplashPageSkin.swf?buildnumber=R410.D1.0.F.CL262924_600

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3 Figure 10. Screenshot in the Chrome Web browser of the Pharaoh's Fortune game being
 4 loaded. Note the copyright and trademark notice, along with the IGT corporate logo,
 5 displayed underneath of the Pharaoh's Fortune game image and above the red box with the
 6 text "Where the World Plays!" A blowup of the copyright notice is also included.
 7

8 An examination of SplashPageSkin.swf with the SWFRIp utility reveals that the base
 9 image for the loading screen depicted in Figure 10 is contained within this SWF file. The extracted
 10 image is included below as Figure 11. This image, when overlaid with other text and graphics
 11 within the SWF file, forms the loading page (often referred to as a "splash page") for the Pharaoh's

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1 Fortune game.¹⁰⁵ An examination of the SplashPageSkin.swf file with an inspection tool reveals
2 that, at byte position 385,514, the text string “All trademarks are registered trademarks or pending
3 trademarks of IGT and/or its licensors in the U.S. and/or other countries. © 2014 IGT. All rights
4 reserved.” appears. This line is identical to the text displayed on the loading page. A screenshot of
5 this section of the SWF file, open in the inspection tool, is featured in Figure 12, below.

6 Indeed, the copyright ownership information IGT chose to attach to these games is
7 conveyed in the same SWF file as certain game images and graphics, and is transmitted in the
8 wave of SWF files that contain the core of the game.

9 The DDC Web App’s manner of dissemination of copyright and trademark ownership
10 information for Coyote Moon and Kitty Glitter is functionally identical to what I described above
11 for Pharaoh’s Fortune, although the game imagery delivered with the copyright and trademark
12 information is specific to each game. For completeness, screenshots of the Coyote Moon and
13 Kitty Glitter loading screens are included as Figures 13 and 14, respectively.

¹⁰⁵ https://en.wikipedia.org/wiki/Splash_screen

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1
2 Figure 11: Image extracted from the Pharaoh's Fortune SplashPageSkin.swf file using
3 SWFRIp. This image forms the basis for the loading page on the DDC Web App.
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Offset(h)	00 01 02 03 04 05 06 07 08 09 0A 0B 0C 0D 0E 0F
0005E0F0	55 50 20 54 4F 20 41 20 36 58 20 4D 55 4C 54 49
0005E100	50 4C 49 45 52 0D 00 BF 12 0C 00 00 00 18 00 50
0005E110	00 00 00 00 00 00 00 00 FF 09 13 00 00 00 19
0005E120	00 01 00 89 06 06 01 00 18 00 12 21 78 00 40 00
0005E130	00 00 BF 11 62 00 00 00 16 01 0A 00 19 00 1E 3F
0005E140	C1 50 E0 01 00 04 02 32 9A 7B FF 00 00 07 00 00
0005E150	00 07 00 FD 09 21 03 FF FF FF FF 00 33 00 FF 00
0005E160	00 02 00 00 00 02 00 0F C9 00 00 00 00 05 00 91
0005E170	00 A1 02 00 00 33 FF 00 00 05 00 00 00 05 00 FD
0005E180	09 21 00 00 00 00 FF 00 00 48 00 00 00 48 00 0F
0005E190	C9 00 00 00 00 05 00 3D 01 21 BF 11 26 00 00 00
0005E1A0	16 01 0C 00 19 00 1E 3F C1 50 E0 01 00 01 00 00
0005E1B0	00 00 FF 00 00 08 00 00 08 00 0F C9 00 00 00
0005E1C0	00 02 00 AB 00 21 7F 09 C1 00 00 00 1A 00 76 71
0005E1D0	0B DC 7F B0 1D 88 AD 35 04 00 40 01 FF FF FF FF
0005E1E0	02 00 00 00 00 00 00 00 00 41 6C 6C 20 74 72
0005E1F0	61 64 65 6D 61 72 6B 73 20 61 72 65 20 72 65 67
0005E200	69 73 74 65 72 65 64 20 74 72 61 64 65 6D 61 72
0005E210	6B 73 20 6F 72 20 70 65 6E 64 69 6E 67 20 74 72
0005E220	61 64 65 6D 61 72 6B 73 20 6F 66 20 49 47 54 20
0005E230	61 6E 64 2F 6F 72 20 69 74 73 20 0D 6C 69 63 65
0005E240	6E 73 6F 72 73 20 69 6E 20 74 68 65 20 55 2E 53
0005E250	2E 20 61 6E 64 2F 6F 72 20 6F 74 68 65 72 20 63
0005E260	6F 75 6E 74 72 69 65 73 2E 20 C2 A9 20 32 30 31
0005E270	34 20 49 47 54 2E 20 41 6C 6C 20 72 69 67 68 74
0005E280	73 20 72 65 73 65 72 76 65 64 2E 0D 00 BF 11 1E
0005E290	00 00 00 16 01 0E 00 1A 00 1E 89 79 BF 10 01 00
0005E2A0	01 02 00 00 66 FF 00 00 1C 00 00 00 1C 00 7A 02
0005E2B0	21 7F 09 27 00 00 00 1B 00 69 31 11 3F FD 80 DD
0005E2C0	00 AD 35 04 00 18 01 FF FF FF FF 00 00 00 00 00
0005E2D0	00 00 28 00 00 4C 4F 41 44 49 4E 47 0D 00 BF 11

Figure 12: The HxD Binary Editor with SplashPageSkin.swf from the Pharaoh's Fortune game open. The highlighted section on the right shows the copyright notice, while the highlighted section in the middle shows the same data in a binary representation. The column on the left shows that we are 385,514 bytes into the file (approximately 376 KB. Note that 5E1EA in Base-16, which is being displayed, is equivalent to 385,514 in Base-10, which is the system humans use to characterize numbers).

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1
2 Figure 13: The Coyote Moon loading screen with copyright ownership information
3 displayed.
4
5
6
7

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Figure 14: The Kitty Glitter loading screen with copyright ownership information displayed.

b. Copyright Information Displayed in the DDC Android App and DDC iOS App

While the DDC Android App is loading a particular slot machine game, a copyright notice is displayed under the game imagery. A sample screenshot of the Pharaoh's Fortune game loading on my Android Test Phone is included below as Figure 15. Note where, below the Pharaoh's head, the text "All trademarks are registered trademarks or pending trademarks of IGT in the U.S. and/or other countries. ©2017" is displayed. While the Pharaoh's Fortune game was being loaded on my Android Test Phone, my team and I observed a file titled "package_ddislots_en_common_gz.js" be downloaded from the DDC Media Server.¹⁰⁶ Based on my knowledge of software engineering,

¹⁰⁶ At time of this writing, this file is offered at https://m-resource.doubledowncasino2.com/games/mobile/1.1.21/mobile/scripts/packages/ddislots/package_ddislots_en_common_gz.js

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1 the name of this file indicated that it is a software “package”, or shared code, for “DDI Slots”, with
 2 components in the English language (“en”), containing the “common” phrases and code functions
 3 for DDI Slots, compressed for easy transmission using GZIP (“gz”),¹⁰⁷ and written in JavaScript
 4 (“js”). This copyright ownership information is conveyed to the player’s device in the wave of
 5 files that contain the core of the game.



6
 7 Figure 15: The Pharaoh’s Fortune loading screen on the Test Android Phone. Note the text
 8 “All trademarks are registered trademarks or pending trademarks of IGT in the U.S. and/or
 9 other countries. © 2017” and the IGT logo in the lower right corner.

10 On lines 24-26 of this file, I observed a JavaScript function that would return the following
 11 language: “All trademarks are registered trademarks or pending trademarks of IGT in the U.S.
 12 and/or other countries. ©2017”. It is therefore apparent to me that the copyright ownership
 13 information for GC2’s Pharaoh’s Fortune is being transmitted in this file.

¹⁰⁷ <https://www.gnu.org/software/gzip/>

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1 The mechanisms for distribution and display of the copyright ownership information for
2 Coyote Moon and Kitty Glitter is identical -- the same file is used.

3 The mechanisms for distribution of the copyright notice within the DDC iOS App is
4 identical to that used in the DDC Android App; the mechanisms are identical.

5 c. **Terms of Use Notices**

6 The DDC Mobile Apps and DDC Web App both offer a link to the DDI's "Terms of Use."
7 This link points to a "Terms" page on doubledowninteractive.com.¹⁰⁸ The link is the same for the
8 DDC Web App and the DDC Mobile Apps. A PDF of this Web page is included as **Exhibit E**. In
9 the case of the DDC Web App, a link to this Terms page is presented in the footer of the website
10 as the website loads. In the case of the DDC Mobile Apps, a JavaScript file that contains the link
11 to these Terms is automatically downloaded by the app when it is opened for the first time. This
12 JavaScript file is downloaded within the same wave of downloads as the slot machine icons.

13 Before accessing DoubleDown Casino, users must agree to IGT's Terms of Use.¹⁰⁹ IGT's
14 Terms of Use for DoubleDown Casino assert that DoubleDown owns "all right, title and interest,
15 including copyrights" to all of the content in DoubleDown Casino.¹¹⁰ The Terms of Use also claim
16 that DoubleDown "retain[s] all rights in the content, ... graphics, ... pictures, [and] video."¹¹¹ In
17 other words, DoubleDown states that it controls and has the rights to all of the content in
18 DoubleDown Casino. IGT's Terms of Use also requires its users to agree to defend and indemnify
19 it from all claims arising out of the use of DoubleDown Casino.¹¹²

¹⁰⁸ <http://www.doubledowninteractive.com/terms/index.html>

¹⁰⁹ Complaint Exhibit 2

¹¹⁰ Complaint Exhibit 2

¹¹¹ Complaint Exhibit 2

¹¹² Complaint Exhibit 2

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2 Based on my review of the DDC Web App, the DDC Android App and the DDC iOS App,
 3 it would be easy for me to play any or all of Pharaoh's Fortune, Coyote Moon, and Kitty Glitter
 4 and receive GC2 images on my own device in a public venue, such as a Starbucks coffee shop.¹¹³
 5 Indeed, the premise of most mobile apps and mobile games is that they may be played nearly
 6 anywhere. I am not a lawyer, but it is my understanding that playing the game in such a public
 7 venue would fall within the definition of Public Display and Public Performance as defined in 17
 8 USC §101.¹¹⁴ The technology employed by DDI transmits the slot machine games at issue in this
 9 case to the public using the Internet, which I consider to be a "device or process." Multiple
 10 members of the public can play the games simultaneously, whether collocated in the same public
 11 venue, or spread out across the country. The ability to play the games is not contingent upon the
 12 time of day, nor is it a requirement that the games be played contemporaneously with other players.
 13 I further understand that GC2 retains exclusive rights to such a Public Display and Public
 14 Performance, and that IGT's continued dissemination of GC2 Copyrighted Material in the manner
 15 described in this report therefore infringes upon GC2's rights of Public Display and Public
 16 Performance, amongst others, based upon 17 USC §106.¹¹⁵

¹¹³ Sigrist Deposition, p. 41-42

¹¹⁴ 17 USC §101 ("To "perform" a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.") ("To perform or display a work "publicly" means—

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times."

¹¹⁵ 17 USC §106 (4) ("in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly")

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3 IGT produces and distributes interactive gaming and makes it available to players through
 4 its agreements with casino operators.¹¹⁶ IGT's interactive games allow users to play casino style
 5 games over the Internet on casino websites for real money or for fun.¹¹⁷ When playing for fun,
 6 users have the option of purchasing additional virtual casino chips to continue playing, though
 7 players do not have the ability to win actual money.¹¹⁸

8 IGT's distribution relationships include Caesars Interactive, Golden Nugget and
 9 Borgata.¹¹⁹ When working with its distributors, IGT integrates its games and back-end computer
 10 systems into the distributor's computer systems so that, from the players' perspective, IGT's games
 11 appear as if they are being offered directly by the distributor.¹²⁰ IGT's interactive gaming system
 12 allows its distributors to collect player, gaming and financial data and includes tools to analyze the
 13 data collected.¹²¹ As long as the user is physically located in an area where online gambling is
 14 legal, the user can also access IGT's real money games on the distributor's website on any
 15 computer with an Internet connection, either at home or using mobile Internet.¹²²

16 One of the "fundamental principles" of IGT's interactive game development was to
 17 identify successful Land-Based Games and then adapt them for use in the interactive segment of

¹¹⁶ Complaint Exhibit 22.

¹¹⁷ Complaint Exhibit 22.

¹¹⁸ Complaint Exhibit 22.

¹¹⁹ <https://www.igt.com/products-and-services/interactive/solutions/real-money-gaming>.
<https://www.igt.com/products-and-services/interactive/platforms/igt-rgs>;

<https://interactive.igtgames.com/content/interactive/igaming/en/casino.html>

¹²⁰ <https://www.igt.com/products-and-services/interactive/solutions/real-money-gaming>

¹²¹ <https://www.igt.com/products-and-services/interactive/solutions/real-money-gaming>

¹²² Shorrock Deposition, p. 56.

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1 the market.¹²³ When adapting Land-Based Games into interactive games, IGT wanted the
2 interactive games to use the same visuals as the original Land-Based Games.¹²⁴ IGT saw value in
3 developing interactive games from popular Land-Based Games with known and appealing artwork
4 and math models.¹²⁵ IGT knew that for users, the graphics were “an important element without
5 question” and users can develop an attachment to the characters in video slot machines; therefore
6 IGT wanted its interactive games to share visual continuity with the Land-Based Games they were
7 modelled on.¹²⁶

8 The interactive and mobile versions of the software do not contain the same final software
9 product as the Land-Based Games. To accurately understand how the software in Land-Based
10 Games is different from the software in an interactive game, it helps to understand the basics of
11 the “client-server” model.¹²⁷ Although the name may sound intimidating, the client-server model
12 is relatively simple: it describes one way that computers can share data over computer networks,
13 such as the Internet, or the one that might be installed in an office. In the client-server computer
14 model, the “client” refers to a computer that requests data from a “server” over a network. For
15 example, if one were to use a personal computer or mobile phone to watch a video on YouTube,
16 the computer/phone would act as a client and request the video from YouTube’s server.

17 Similar to how a user could play a video on YouTube through their computer’s Web
18 browser by going to YouTube’s website, users can also play the interactive version of IGT’s games
19 through their computer’s Web browser by going to the website of one of IGT’s distributors, such

¹²³ Shorrock Deposition, p. 19-20, 72.

¹²⁴ Shorrock Deposition, p. 70.

¹²⁵ Shorrock Deposition, p. 62-66.

¹²⁶ Shorrock Deposition, p. 68-69, 71.

¹²⁷ https://en.wikipedia.org/wiki/Client-server_model

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1 as Bet365, Gala Coral, Sky, or Caesar's Interactive Entertainment.¹²⁸ When a user is playing an
2 interactive IGT game on the Internet, the user's computer is the client and requests data from IGT's
3 server. When a user is playing an IGT game on a distributor's website, a portion of IGT's software
4 is downloaded onto the user's computer.¹²⁹ This portion of the software is known as the client-
5 side software.¹³⁰ The client-side software does not control the outcome of a game, it simply
6 receives data from the server and displays that data in a visually appealing way. The client-side
7 software does not include the payout tables or random number generator, which controls the
8 outcomes of the user's bets; the payout tables and random number generator stays on IGT's or its
9 affiliate's servers.¹³¹

10 When a player or prospective player visits the website of one of IGT's distributors, the
11 player will arrive at a webpage known as an "operator lobby" which is maintained by the
12 distributor.¹³² In the operator lobby, the user finds a menu listing the games that are available to
13 play.¹³³ Each game is represented by a small image, or icon, the user can click this image to launch
14 the game.¹³⁴ The icons for IGT's games are generally a piece of art from the game and are delivered
15 to the distributor by IGT's gaming service department.¹³⁵ GC2 Copyrighted Material is used by
16 IGT within these operator lobbies for the games at issue in this case. When a player clicks on the
17 icon for a game, the player's computer will download and launch the client-side components of
18 IGT's game, which includes the artwork and graphics for the game.¹³⁶

¹²⁸ Kastner 30(b)(6) Deposition, p. 213, 247; Shorrock Deposition, p. 51-52.

¹²⁹ Shorrock Deposition, p. 54-55, 92;

¹³⁰ Shorrock Deposition, p. 53-54.

¹³¹ Shorrock Deposition, p. 39-41, 53-54.

¹³² Supplemental Response to Interrogatory No. 5

¹³³ Shorrock Deposition, p. 52.

¹³⁴ Shorrock Deposition, p. 52-53.

¹³⁵ Shorrock Deposition, p. 52.

¹³⁶ Shorrock Deposition, p. 53-54.

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1 Revenue from interactive gaming is generated from both social gaming and IGT's real-
 2 money gambling products.¹³⁷ Social gaming revenues are received for the sale of virtual casino
 3 chips which are purchased by the user.¹³⁸ IGT's real-money gambling products generate revenue
 4 as part of the revenue sharing agreement IGT has with its partner casinos who distribute its
 5 games.¹³⁹

6 Additionally, IGT maintains a private website and private login section of www.IGT.com
 7 for operators and licensees where IGT makes promotional material and videos available for
 8 download.¹⁴⁰ This marketing material contains GC2's artwork and graphics and can be
 9 downloaded by casino operators, such as Caesars Interactive, to assist them in marketing games
 10 containing GC2's artwork and graphics.¹⁴¹

11 **2. RGS Customers - IGT Agreements with Operators**

12 As mentioned above, IGT has contracts that include revenue sharing provisions with the
 13 operators that distribute IGT's games. Casino games are designed to ensure that, in the long run,
 14 the house always wins, a statistical advantage often referred to as the "house advantage."¹⁴² The
 15 casino's gaming revenue is derived from this house advantage.¹⁴³ IGT's contracts with its licensees
 16 stipulate the percentage of the casino's revenue after taxes and deductions that IGT receives; IGT
 17 is essentially receiving royalties and is therefore provided with obvious incentives to keep players
 18 engaged.¹⁴⁴

¹³⁷ Complaint Exhibit 22.

¹³⁸ Complaint Exhibit 22.

¹³⁹ Complaint Exhibit 22.

¹⁴⁰ Shorrock Deposition, p. 204-205, 209-210.

¹⁴¹ Shorrock Deposition, p. 204-205, 209-210.

¹⁴² https://en.wikipedia.org/wiki/Casino_game#House_advantage

¹⁴³ https://en.wikipedia.org/wiki/Casino_game#House_advantage

¹⁴⁴ Kastner 30(b)(6) Deposition, p. 95.

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1 In addition to describing the revenue sharing arrangement between IGT and the operators,
2 IGTs agreements also describe each parties' technical operational requirements and
3 responsibilities to support the gaming platform.¹⁴⁵ IGT shares access to its RGS game testing
4 environment for development testing and assists the operator with integrating and customizing
5 how IGT's games work on their webpage.¹⁴⁶ IGT provides the operator with an application
6 protocol interface, or API, which enables the user to click on an IGT game icon on the operator's
7 website and play that game from IGT's servers.¹⁴⁷ Without the provision of these IGT
8 components, IGT's games, including Games which contain GC2 artwork and graphics, would not
9 be correctly distributed to the users.¹⁴⁸ IGT also agrees with operators to provide and support the
10 correct display of art assets for the game menu and game page displays.¹⁴⁹

11 The operator has obligations to IGT as well. The operator must perform system integration
12 planning and software development to ensure that IGT's games are available on the operator's
13 website.¹⁵⁰

14 Beyond software and computer network integration, IGT's agreements with operators also
15 represent that IGT has rights to GC2 Copyrighted Material and agrees to indemnify the operator
16 for intellectual property infringement.¹⁵¹ IGT's agreement with an operator allows it to modify its
17 games to avoid intellectual property infringement.¹⁵²

¹⁴⁵ Clelland Deposition Exhibit 70, 71, and 73.

¹⁴⁶ Kastner 30(b)(6) Deposition, p. 253-254.

¹⁴⁷ Kastner 30(b)(6) Deposition, p. 254-255.

¹⁴⁸ Kastner 30(b)(6) Deposition, p. 255.

¹⁴⁹ Kastner 30(b)(6) Deposition, p. 256-257.

¹⁵⁰ Kastner 30(b)(6) Deposition, p. 259.

¹⁵¹ Kastner 30(b)(6) Deposition, p. 261.

¹⁵² Kastner 30(b)(6) Deposition, p. 264.

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3. Operators' Connections to the IGT Remote Game Server

2 Although IGT offers its games through its operators' websites, the games themselves are
3 not housed within the operator's internal IT infrastructure.¹⁵³ When a user visits the website of an
4 IGT operator, the operator lobby webpage, where a user can select a game to play, is maintained
5 by the operator and distributed by the operator's servers and IT infrastructure.¹⁵⁴ IGT's remote
6 game servers (RGS) distribute IGT's games to the end users through the operator's webpages.¹⁵⁵
7 IGT's RGS is itself a product that IGT offers its operators.¹⁵⁶

8 When a user visits the website of one of IGT's affiliates, they are presented with a series
9 of icons for the various games available. Clicking on one of these icons causes the associated slot
10 machine game to be loaded. This behavior is discussed in greater detail in section V.B.4.a, below.
11 When a user plays a spin on an IGT slot machine game, the user's computer sends a signal to the
12 random number generator on IGT's server via the Internet.¹⁵⁷ The random number generator
13 determines the outcome of the user's spin and transmits that outcome to the user's computer.¹⁵⁸

14 IGT's RGS integrates into the operator's platform and aides the management of digital
15 patron wallets, responsible gaming functionality, fraud detection and prevention, customer
16 relationship management, player accounting, and player analytics.¹⁵⁹ IGT maintains RGS servers

¹⁵³ Supplemental Response to Interrogatory No. 5.

¹⁵⁴ Supplemental Response to Interrogatory No. 5.

¹⁵⁵ Shorrock Deposition, p. 92.

¹⁵⁶ Shorrock Deposition, p. 93.

¹⁵⁷ Supplemental Response to Interrogatory No. 5.

¹⁵⁸ Supplemental Response to Interrogatory No. 5.

¹⁵⁹ Supplemental Response

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1 in New Jersey, Canada, Gibraltar and Alderney.¹⁶⁰ IGT's servers record the outcome of every spin
 2 including the date, time, and amount wagered.¹⁶¹

3 In the United States, once a user selects an IGT game to play, the user's computer is
 4 connected to an IGT RGS server located in IGT's New Jersey data center.¹⁶² IGT's data center
 5 contains numerous servers hosting various components of IGT's games.¹⁶³ One such component
 6 is each game's "logic" or "math" which controls the outcome of each spin of the virtual slot
 7 machine the user is playing.¹⁶⁴ The logic of an IGT game is influenced by a random number
 8 generator and is regulated by the State of New Jersey.¹⁶⁵ The logic and math of the IGT games
 9 remain on IGT's servers while the user is playing the game and are not downloaded to the user's
 10 computer.¹⁶⁶

11

12 **4. Users Connections to IGT Remote Game Servers**

13 IGT makes their games available online for real-money play through several channels,
 14 including via Caesars Casino ("Caesars"). The 2011 legalization of online gambling within New
 15 Jersey¹⁶⁷ allowed for the expansion of Caesar's operations in Atlantic City and resulted in the
 16 release of a Web and iOS app to allow players to play "anytime, anywhere, in New Jersey!"¹⁶⁸

17 Caesars, via the caesarscasino.com website (the "Caesars Web App"), makes a variety of
 18 casino games, including slots, roulette, and video poker, available to online players. The Caesars

¹⁶⁰ Kastner 30(b)(6) Deposition, p. 11-12, 15-16, 20-21.

¹⁶¹ Supplemental Response to Interrogatory No. 5.

¹⁶² Supplemental Response to Interrogatory No. 5.

¹⁶³ Supplemental Response to Interrogatory No. 5.

¹⁶⁴ Supplemental Response to Interrogatory No. 5.; Shorrock Deposition, p. 40-41.

¹⁶⁵ Supplemental Response to Interrogatory No. 5.

¹⁶⁶ Shorrock Deposition, p. 39-41, 53-54.

¹⁶⁷ https://en.wikipedia.org/wiki/Gambling_in_New_Jersey#Online_gambling

¹⁶⁸ <https://www.caesarscasino.com/>

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1 Web App can be accessed from locations outside of New Jersey, and allows “demo play,” which
2 is not for money, without asking for a player’s location. My team and I played the demos for
3 Pharaoh’s Fortune, Coyote Moon, and Kitty Glitter from our offices in Los Angeles.

4 In order to confirm that real-money play was consistent with our demo play, my team and
5 I had a colleague who was a New Jersey resident access caesarscasino.com from a laptop while
6 within New Jersey. This laptop had been previously configured with the Fiddler 4 tool. Our
7 colleague signed up for real-money gaming and added \$100 from his personal bank account. At
8 no point while this laptop was in New Jersey did myself or another non-New Jersey based
9 technician interact with it.

10 The resulting network traffic capture from Fiddler 4 was transmitted back to Los Angeles,
11 where my team analyzed it and confirmed that gameplay within New Jersey for real money is
12 substantially identical to gameplay in a “demo mode” from Los Angeles.

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a. The Caesars Casino Website

Attribute	Open App 1 st Time	Play Game 1 st Time
TERMS OF USE	Link to Terms of Use presented at bottom of page.	Link to Terms of Use presented at bottom of page.
COMPUTER CODE CONVEYED	Flash files indicating what games are available, including animations and placement of game icons.	Computer code indicating where to place game graphics on the screen, how they should move, and how they should respond to the user.
IMAGES CONVEYED	Multiple Flash files each containing multiple images.	Multiple Flash files each containing multiple images.
ANY IMAGES DISPLAYED	Game icons displayed to player.	Game, including game play graphics, displayed.
COPYRIGHT OWNERSHIP INFORMATION DISTRIBUTED	Link to Terms of Use presented at bottom of page.	Copyright ownership information presented as game loads, based on Flash files from server.
POTENTIAL NUMBER OF DEVICES IMPACTED	Unknown	Unknown.

2 From a technical perspective, the Caesars Web App is conceptually similar to the DDC
 3 Web App. On the Caesars app, media assets, including SWF files that are substantially similar to
 4 the SWF files used by the DDC Web App, are delivered from a server at
 5 “platform.ac.rgsgames.com” (the “**Caesars Media Server**”). I am informed that this server is
 6 located within the State of New Jersey, in keeping with the rules promulgated by the New Jersey
 7 Gaming Commission.

9 Similarly, the Caesars Web App communicated with a control server at
 10 “nyxnj.games.cwgds.com” and exchanged game play information, such as game spins (the
 11 “**Caesars Gameplay Server**”). The communications I observed with the Caesars Gameplay server
 12 were structured within a computer-readable format known as XML, or Extensible Markup
 13 Language. However, the communications I saw with the Caesars Gameplay Server were generally

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1 similar in style and substance to the communications I saw with the DDC Gameplay server for the
2 DDC Web App.

3 In the section on the DDC Web App, I discussed the SWF file for Pharaoh's Fortune named
4 "SplashPageSkin.swf." This file contains the copyright notice information that is displayed as
5 Pharaoh's Fortune loads. An equivalent file is served by the Caesars Media Server.¹⁶⁹ A
6 comparison of this file and the one offered by the DDC Media Server showed that they were byte-
7 for-byte identical. Furthermore, the Caesars Media Server offered a Cache Control header for this
8 file specifying that it should be kept by the Web browser for 14 days.¹⁷⁰

9 A collection of images contained within the SWF files that were downloaded when we
10 played Pharaoh's Fortune, Coyote Moon, and Kitty Glitter on the Caesars Web App and that
11 contain GC2 Copyrighted Material is provided below in Section V.B.5.a.

¹⁶⁹ At time of this writing, this was
<https://platform.ac.rgsgames.com//studios/saber/games/PharaohsFortune/assets/en/SplashPageSkin.swf?revisionTag=73ee4f4f-cc51-46f3-842b-1a5abdfc1509>

¹⁷⁰ "Cache-Control: max-age=1209600, public, must-revalidate"; 1,209,600 seconds is equivalent to 14 days.

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b. Caesars Casino for iOS

Attribute	App Marketplace	App to Phone	Open App 1 st Time on Device	Play Game 1 st Time on Device	Open App 2 nd Time on Device	Play Game 2 nd Time on Device
TERMS OF USE	N/A	N/A	Computer code with link to Terms of Use automatically downloaded by app. Link to Terms of Use presented in menu.	N/A	Link to Terms of Use presented in menu.	Link to Terms of Use presented in menu.
COMPUTER CODE CONVEYED	N/A	iOS application package sent	N/A	Computer code indicating how images should be assembled from sprite sheets, where they should be placed on the screen, how they should move, etc.	N/A	Computer code redownloaded if necessary.
IMAGES CONVEYED	N/A	N/A	Multiple sprite sheets each containing multiple images.	Multiple sprite sheets each containing multiple images.	Sprite sheets redownloaded if necessary.	Sprite sheets redownloaded if necessary.
ANY IMAGES DISPLAYED	N/A	N/A	Game icons displayed to player.	Game, including game play graphics, displayed.	Game icons displayed to player.	Game, including game play graphics, displayed.
COPYRIGHT OWNERSHIP INFORMATION DISTRIBUTED	N/A	N/A	Link to Terms of Use presented in menu.	Server distributes computer code and graphics files with copyright information. Copyright ownership information displayed while game loads.	Link to Terms of Use presented in menu.	Computer code and graphics files with copyright information redownloaded if necessary. Copyright ownership information displayed while game loads.
POTENTIAL NUMBER OF DEVICES IMPACTED	N/A	Unknown.	Unknown.	Precise figure needed from IGT.	Precise figure needed from IGT.	Precise figure needed from IGT.

Similarly, Caesar's makes an app available for iOS called "Caesars Real Money Casino

NJ" (the "Caesars iOS App").¹⁷¹ Due to technical limitations, my team and I were unable to

5 capture or play on this app from within New Jersey, but we were able to play and analyze it from

6 Los Angeles. IGT's 30(b)(6) witness, Steve Kastner, stated that the artwork and graphics that are

7 displayed on the end user's screen while playing Coyote Moon would be the same in New Jersey,

8 Canada, Alderney, Gibraltar, or other player locations during game play within and without New

9 Jersey.¹⁷² The same artwork and graphics files that are served from the IGT central servers are

10 served in the same manner out of NJ, Canada, Gibraltar, or Alderney. This is consistent with my

11 observations for the Caesars Web App, from which my team and I were able to play non-wagering

12 demonstrations in multiple locations.

¹⁷¹ <https://itunes.apple.com/us/app/caesars-real-money-casino-nj/id876336616?mt=8>

¹⁷² Kastner 30(b)(6) Deposition, p. 11-12, 15-16, 20-21.

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1 The Caesars iOS App communicated with the same Caesars Gameplay Server as used by
2 the Caesars Web App. The general mechanics of this interaction appear to be the same for the
3 Caesars Web App and the Caesars iOS App.

4 The Caesars iOS App downloads sprite sheets and gameplay logic from
5 “m.ac.rgsgames.com” (the “**Caesars Mobile Media Server**”). This server, based on its IP address,
6 is likely in the same building as the Caesars Media Server. These sprite sheets are slightly different
7 in layout from the ones sent by the DDC Media Server, and some images are transmitted
8 independently, but the general structure is conceptually the same as for the DDC iOS App.

c. Caesars Casino for Android

10 My team and I were not able to identify a Caesars real-money app available on the Google
11 Play Store or on the Amazon Appstore. The Google Play store does not allow real-money gambling
12 apps to be distributed on it within the United States.¹⁷³ This has likely caused Caesars to not
13 develop such an app.

5. Artwork Assets Transferred Playing the Games

15 **Exhibit G** contains the full set of images that were transferred when the Caesars apps were
16 played. The Exhibit contains a total of 2,174 images. Included below in Subsections a-c are
17 selected images from Exhibit G that were downloaded from the Caesars Media Server.

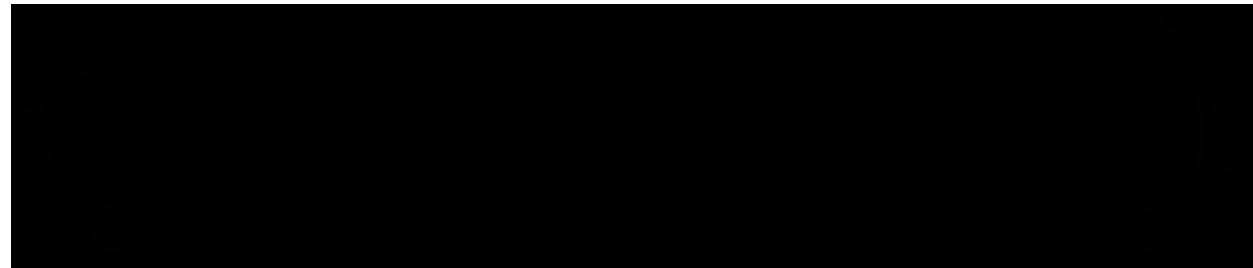
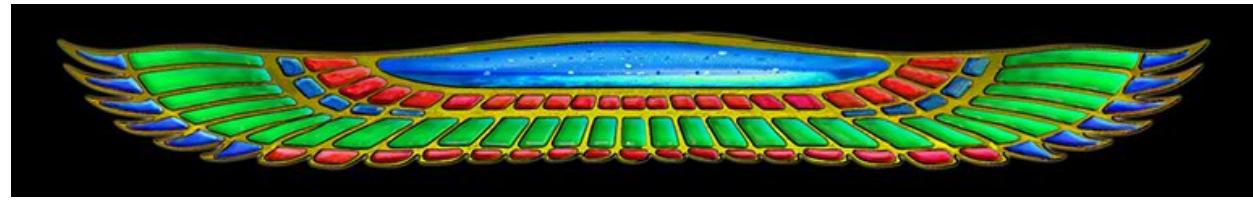
¹⁷³ <https://play.google.com/about/restricted-content/gambling/>

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1 a. **Caesars Casino Web**

2 The following is a selection of images that were downloaded by the Chrome browser to
3 my team's computer in New Jersey by the Caesars Web App when my colleague played the
4 Pharaoh's Fortune, Coyote Moon and Kitty Glitter slot machine games for the first time:



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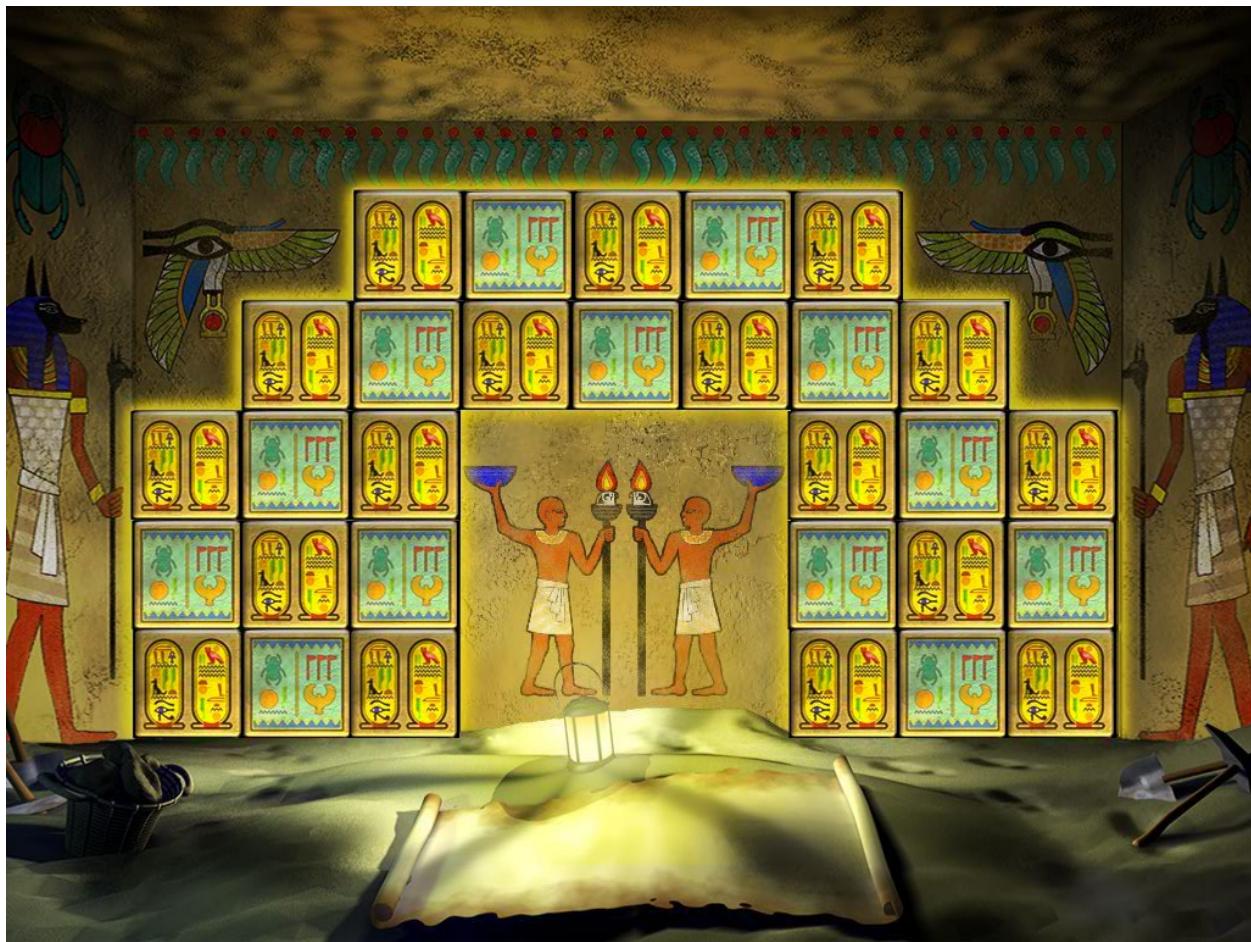
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1



2



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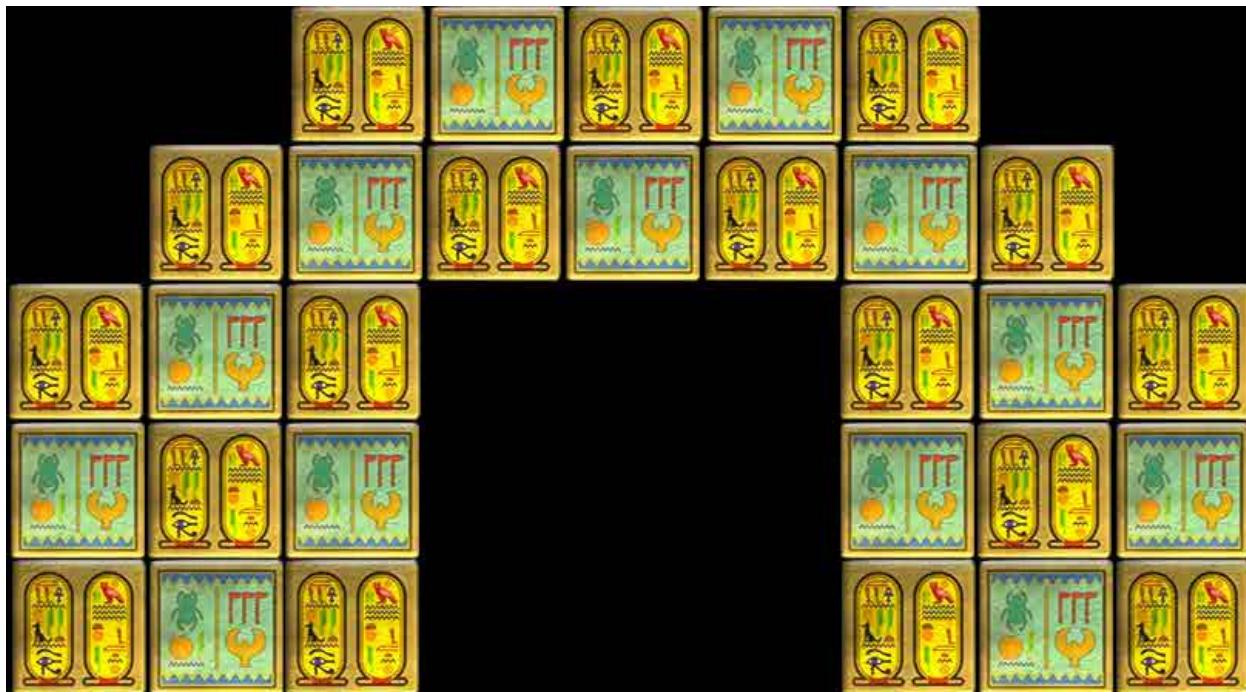
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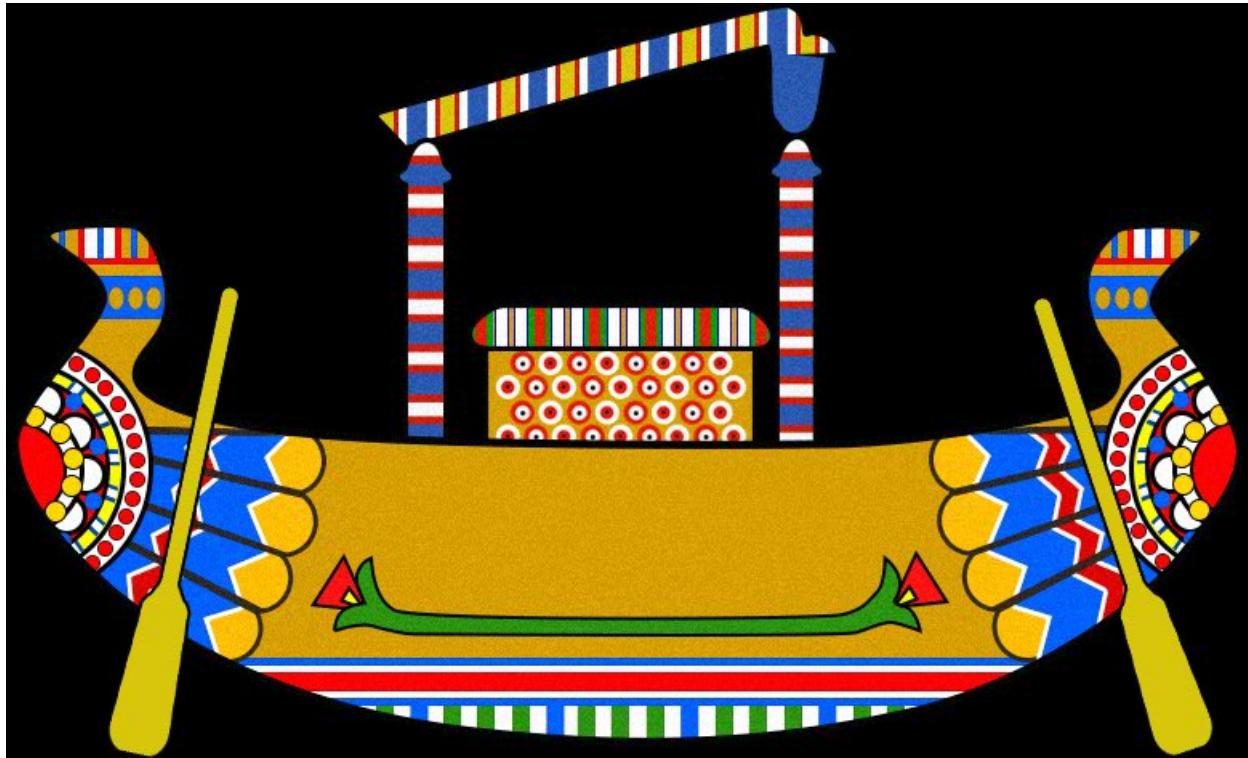
1



2

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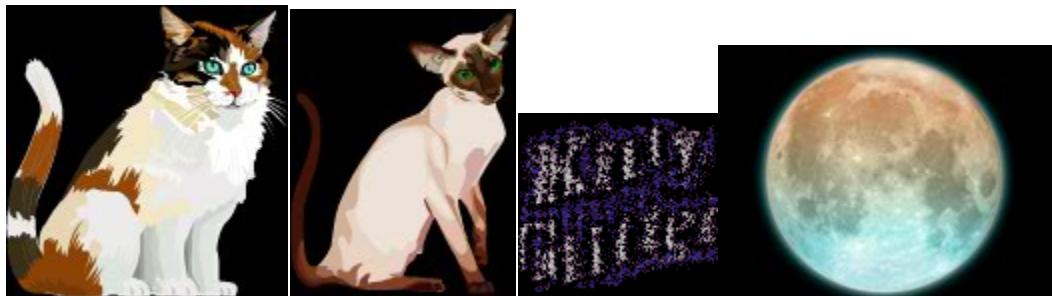
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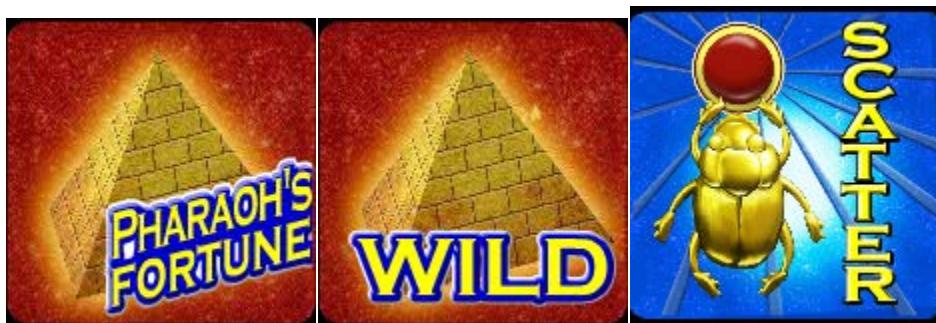
1



2



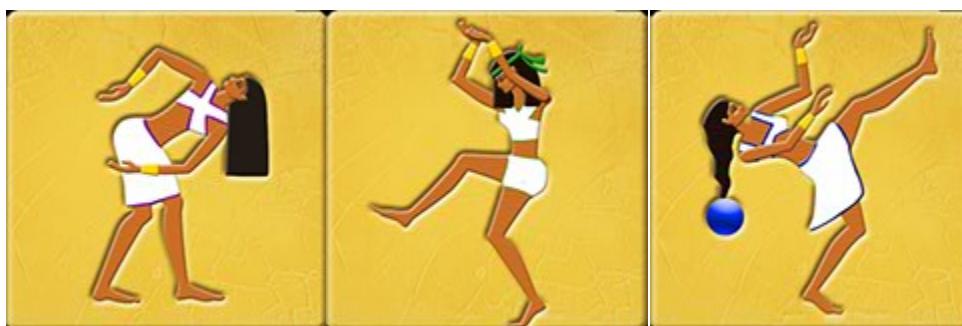
3



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b. Caesars Casino iOS – Pharaoh's Fortune

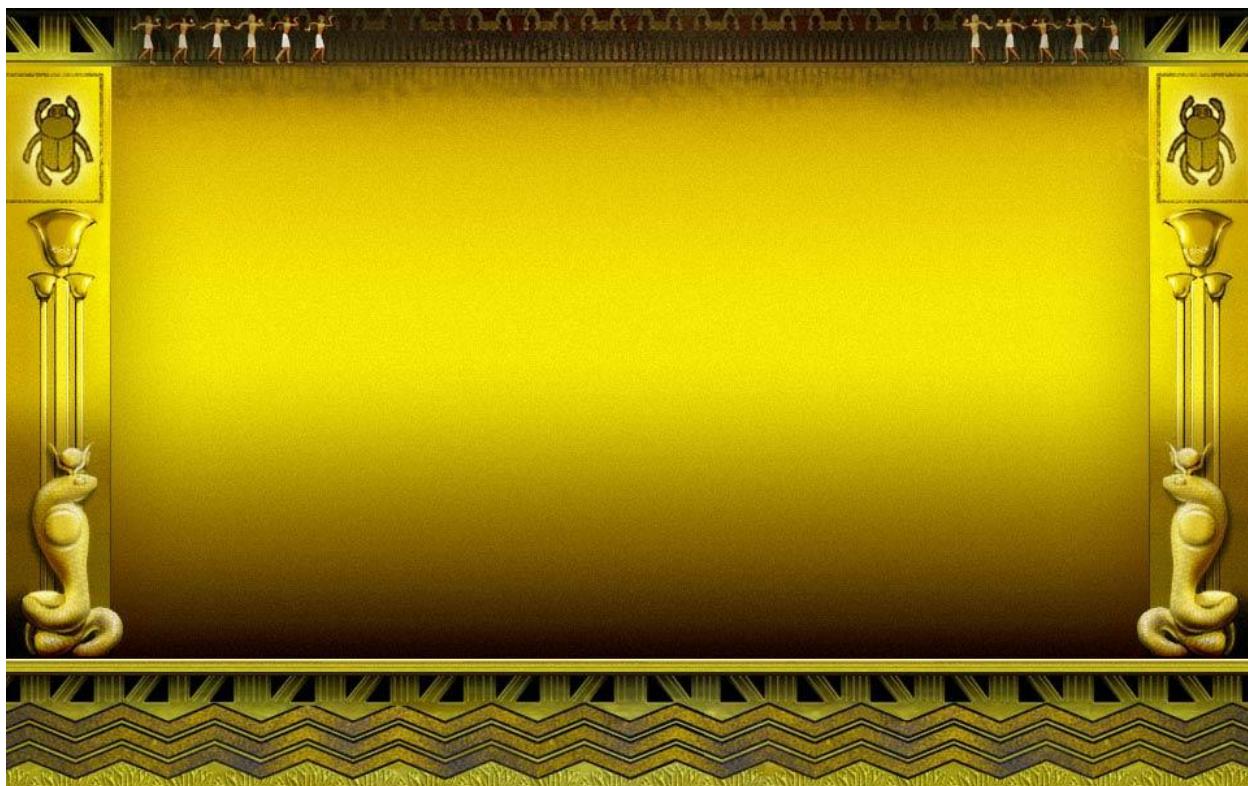
5 The following is a selection of artwork that was downloaded to my Test iPhone by the Caesars
6 iOS App when I played the Pharaoh's Fortune slot machine game for the first time:

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1



2

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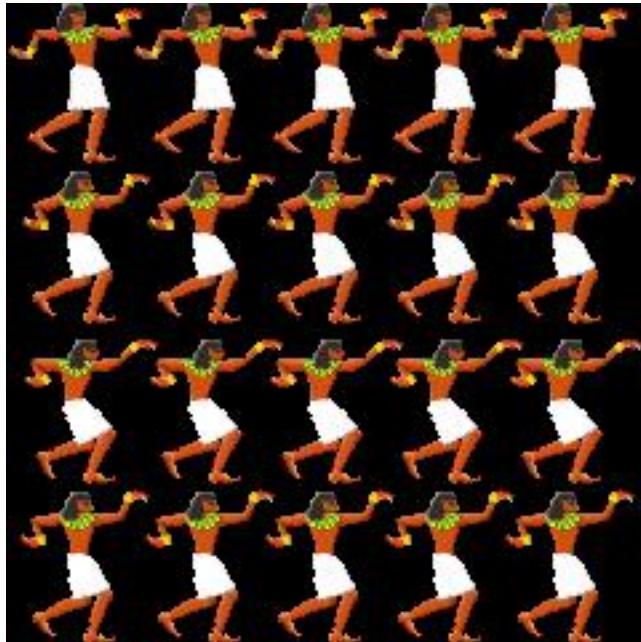
1



2

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1



2

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2

PHARAOH'S FORTUNE



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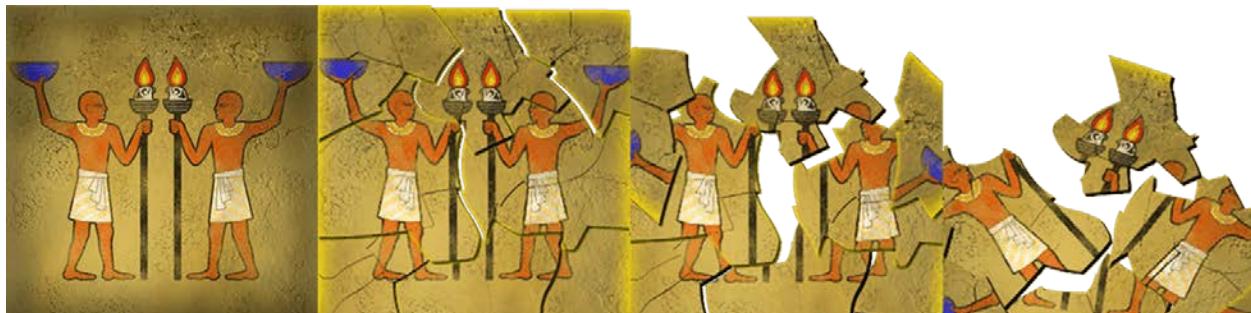
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1

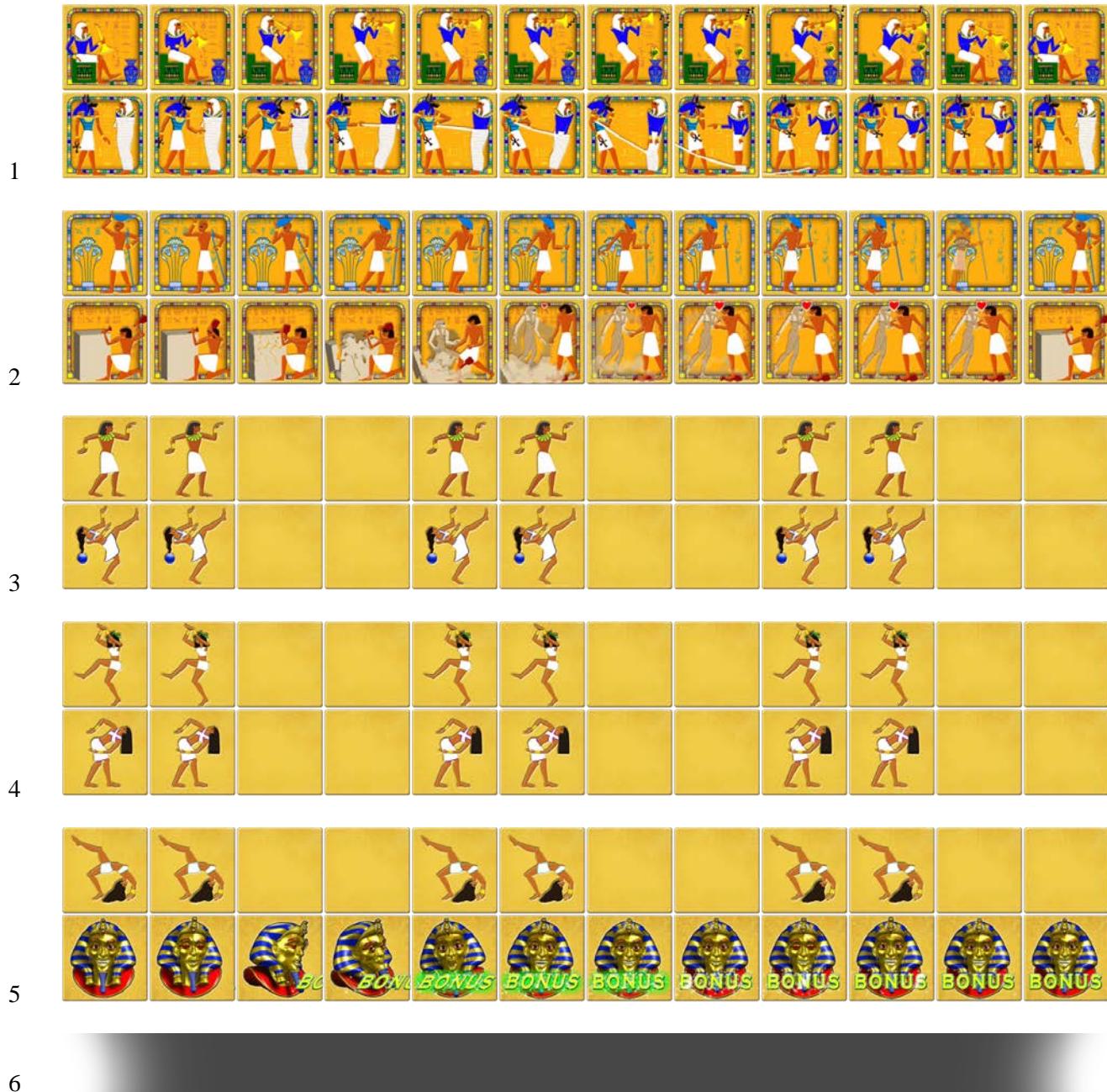
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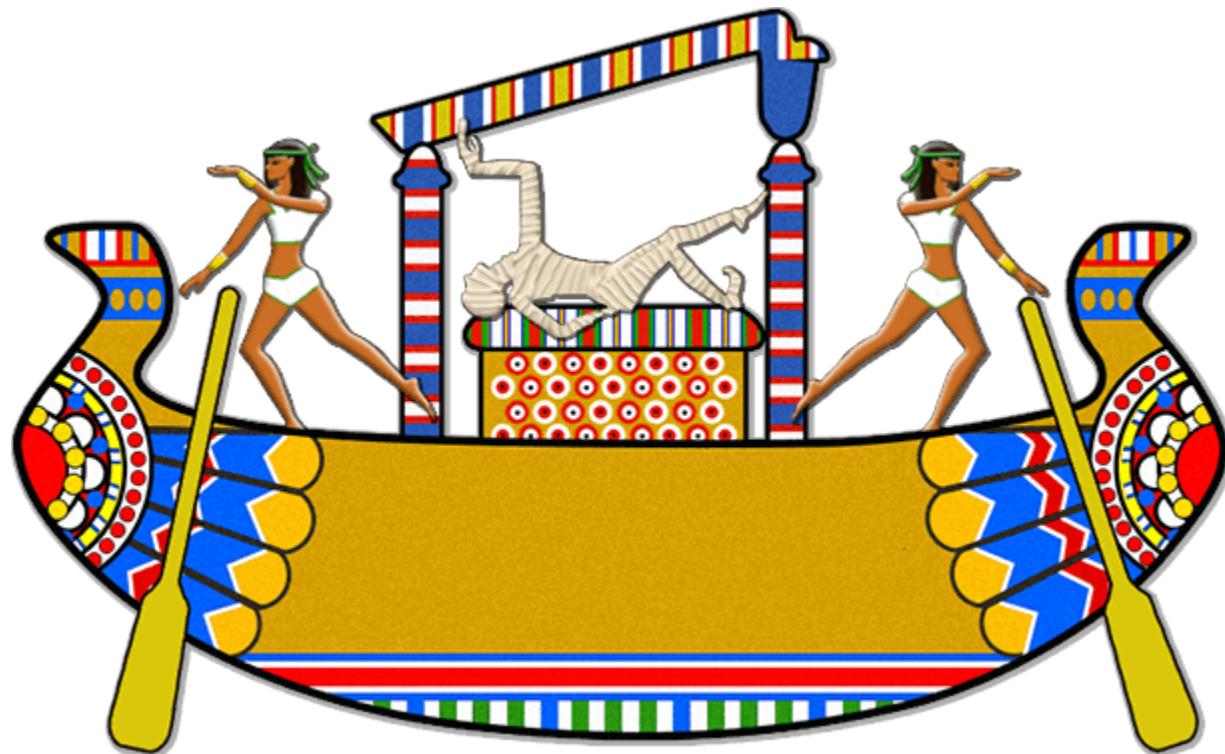
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1



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3 **c. Caesars Casino iOS – Kitty Glitter**

4 The following is a selection of artwork that was downloaded to my Test iPhone by the Caesars
5 iOS App when I played the Kitty Glitter slot machine game for the first time:



6



7



8



9



10



11

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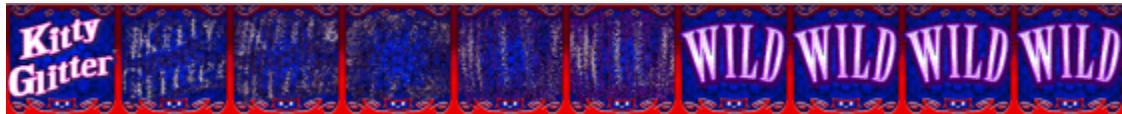
3



4

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6. Copyright Management Ownership Information Displayed in IGT Interactive/RGS Games with GC2 Content

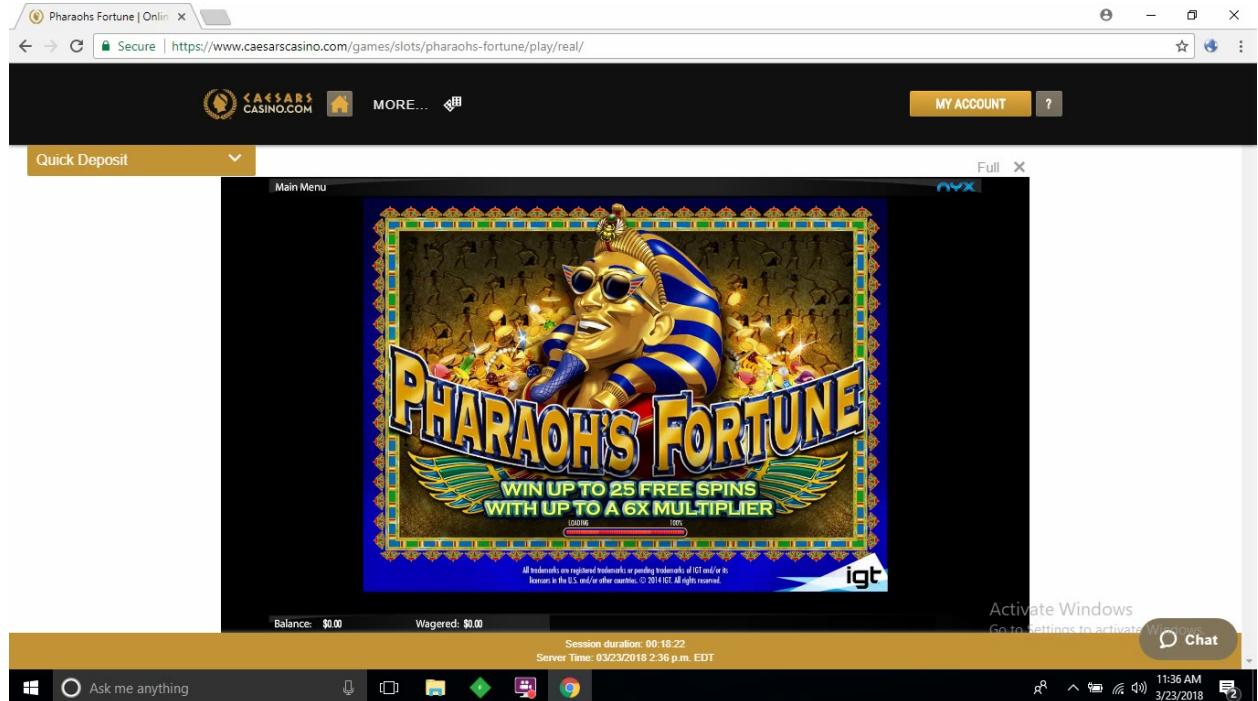
5 As with the DDC Web App, I observed that during a gameplay on Caesars Web App and
6 the Caesar's iOS App the display of text stating information about copyright and trademark
7 ownership is included in the files offered by the Caesar's Media Server. Just like the DDC Web
8 App, the copyright attribution information that is displayed on the Caesar's Web App is contained
9 within a game-specific SWF file which is loaded in a player's Web browser when that slot machine
10 game launches. For the Pharaoh's Fortune slot machine game on the Caesar's Web App, I
11 observed that a file called SplashPageSkin.swf is downloaded from the Caesar's Media Server as
12 the rest of the game is launching.¹⁷⁴ Figure 16 displays a screenshot of the Chrome Web browser
13 as the game loads. Below the Pharaoh's Fortune logo, which is GC2 Copyrighted Material, is text
14 which reads: "All trademarks are registered trademarks or pending trademarks of IGT and/or its
15 licensors in the U.S. and/or other countries. © 2014 IGT. All rights reserved." This copyright
16 notice precedes the display of the Pharaoh's Fortune game, including other graphics and images

¹⁷⁴ At the time of this writing, SplashPageSkin.swf is being offered online at https://d-resource.doubledowncasino2.com/rgs/20171016/studios/saber/games/PharaohsFortune/assets/en/SplashPageSkin.swf?buildnumber=R410.D1.0.F.CL262924_600

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- 1 that are GC2 Copyrighted Material. It is my understanding that GC2 has not licensed this artwork
- 2 to IGT for the purposes of online interactive or mobile games.



3



4

5 Figure 16: Screenshot in the Chrome Web browser of the Pharaoh's Fortune game being
6 loaded on a laptop. A blowup of the copyright notice is also included.

7

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1 The Caesars iOS App loads a file from the Caesars Mobile Media Server titled
 2 “strings.json”.¹⁷⁵ This file contains the following line: “All trademarks are registered trademarks
 3 or pending trademarks of IGT in the U.S. and/or other countries. © 2014 IGT. All rights reserved.”

4 As with the DDC apps, this copyright ownership information is conveyed to the player’s
 5 device in the wave of files that contain the core of the game.

6 **7. Public Display/Public Performance**

7 Based on my review of the Caesars Web App and the Caesars Mobile App, it would be
 8 easy for me to play any or all of Pharaoh’s Fortune, Coyote Moon, and Kitty Glitter and receive
 9 GC2 images on my own device in a public venue, such as a Starbucks coffee shop. Indeed, the
 10 promise of Caesars Casino is that the player can play “anytime, anywhere,”¹⁷⁶ and IGT also touts
 11 its mobile capabilities with respect to interactive gaming.¹⁷⁷ I am not a lawyer, but it is my
 12 understanding that playing the game in such a public venue would fall within the definition of
 13 Public Display and Public Performance as defined in 17 USC §101.¹⁷⁸ The technology employed
 14 by IGT and its affiliates transmits the slot machine games at issue in this case to the public using
 15 the Internet, which I consider to be a “device or process.” Multiple members of the public can play

¹⁷⁵ At the time of this writing, this was available at <https://m.ac.rgsgames.com/games/assets/strings.json?countrycode=CA&channel=MOB&language=en¤cycode=FPY&softwareid=200-1236-003&presenttype=STD&tag=0585d477211c6374b70ae1b02cc0fe07>

¹⁷⁶ <https://www.caesarscasino.com/>

¹⁷⁷ Clelland Deposition Exhibit 76, p. 49

¹⁷⁸ 17 USC §101 (“To “perform” a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.”) (“To perform or display a work “publicly” means—

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.”)

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1 the games simultaneously, whether collocated in the same public venue, or spread out across the
2 country. The ability to play the games is not contingent upon the time of day, nor is it a requirement
3 that the games be played contemporaneously with other players. I further understand that it is
4 GC2's contention that it retains exclusive rights to such a Public Display and Public Performance,
5 and that as such IGT's continued dissemination of GC2 Copyrighted Material therefore infringes
6 upon GC2's rights of Public Display and Public Performance, amongst others, based upon 17 USC
7 §106.¹⁷⁹

8 **C. Masque and Encore CD-ROMs for PC/Mac and Website Download**

9 **1. IGT's Relationship with Masque**

10 IGT's business relationship with Masque - a developer and publisher of non-wagering
11 casino style computer games for Macintosh and Windows operating systems – has spanned
12 decades.¹⁸⁰ Masque distributes its games not only through brick and mortar retail stores and its
13 own website, but also through online retailers such as Amazon.com.¹⁸¹ Masque's games are
14 offered to its customers via both digital download and physical discs, traditionally referred to as
15 CD-ROMs.¹⁸² Some of the games that Masque sold contained GC2 Copyrighted Material. These
16 images were present within the games themselves as well as on the packaging for the physical
17 disks.¹⁸³

¹⁷⁹ 17 USC §106 (4) ("in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly")

¹⁸⁰ https://www.masque.com/about_us; 1999 Trademark and Copyright License Agreement; 2010 Restated Trademark and Copyright License.

¹⁸¹ https://www.masque.com/about_us;
https://www.amazon.com/Masque-Publishing/b/ref=bl_dp_s_web_3445232011?ie=UTF8&node=3445232011&field-lbr_brands_browse-bin=Masque+Publishing

¹⁸² Complaint, paragraph 59; <https://www.masque.com/game/2839/igt-slots-lil-lady>

¹⁸³ Complaint, paragraph 144-152.

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1 Since 1999, IGT has had various licensing agreements with Masque.¹⁸⁴ These agreements
 2 give Masque a license to reproduce and distribute what IGT represented were its trademarked and
 3 copyrighted graphics and artwork in Masque's retail distribution of computer games.¹⁸⁵ The
 4 games IGT licensed to Masque include games containing GC2's artwork and graphics, including
 5 Pharaoh's Fortune, Lucky Lion Fish, Wild Goose Chase, Festival Fantastico, Kingpin Bowling,
 6 and Maid of Money.¹⁸⁶ In IGT's 2010 licensing agreement with Masque, IGT asserts that it has
 7 the full legal right to license GC2's artwork and graphics, and goes on to assert that any derivative
 8 works created by Masque under the licensing contract shall be the exclusive property of IGT.¹⁸⁷
 9 IGT additionally requires Masque to hold IGT harmless from any third-party lawsuits.¹⁸⁸ In
 10 exchange for the license to IGT's games, Masque agreed to pay IGT royalties on the CD-ROMs it
 11 distributed.¹⁸⁹

12 **2. Content on Discs Distributed by Masque**

13 CD-ROMs containing versions of multiple slot machine games, including Pharaoh's
 14 Fortune, Lucky Lion Fish, Wild Goose Chase, Festival Fantastico, Kingpin Bowling, and Maid of
 15 Money are distributed by Masque Publishing Inc. ("Masque"). CD-ROMs, also referred to as
 16 "computer discs," were widely used to distribute computer games prior to the transition to
 17 downloading games over the Internet in the late 2000s.

¹⁸⁴ 1999 Trademark and Copyright License Agreement; 2010 Restated Trademark and Copyright License

¹⁸⁵ 1999 Trademark and Copyright License Agreement; 2010 Restated Trademark and Copyright License

¹⁸⁶ 2010 Restated Trademark and Copyright License MASQ_000015 at p. 12

¹⁸⁷ 2010 Restated Trademark and Copyright License MASQ_000015

¹⁸⁸ 2010 Restated Trademark and Copyright License MASQ_000015

¹⁸⁹ 2010 Restated Trademark and Copyright License MASQ_000015

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1 IGT sent Masque a hard drive with artwork and graphics for Lucky Lionfish, Festival
2 Fantastico and Wild Goose Chase in January 2009.¹⁹⁰ IGT sent Masque a hard drive with artwork
3 and graphics for Pharaoh's Fortune, Kingpin Bowling, and Maid of Money in January and
4 February of 2011.¹⁹¹ I understand that these games contain GC2 Copyrighted Material. I
5 understand that GC2 has not extended to IGT nor to Masque a license to use this copyrighted
6 artwork and graphics on interactive games.

7 Each of the discs I have examined is generally consistent in structure. Each disc contains
8 an executable file or files appropriate for the operating system it is designed for (e.g. Mac OS X,
9 Windows 8, etc.) This executable file serves as an “installer,” which assists the user in copying the
10 game files and logic from the disc onto their personal computer.

11 For most of the discs, the files that would be copied onto the computer include a number
12 of Flash files. I discuss Flash files at length in Section V.A.4. The files on these discs are generally
13 analogous in content and structure to the files found on other IGT game platforms making use of
14 Flash, such as the DDC Web App and the Caesars Web App, discussed in Sections V.A.4 and
15 V.B.4.a, respectfully.

16 A small number of the discs did not make use of Flash files. Nonetheless, GC2 Copyrighted
17 Material is resident on the discs, and is copied over to a player's computer when the disc contents
18 are installed.

19 Indeed, the boxes and packaging for these discs contains imagery that appears to
20 incorporate GC2 Copyrighted Material. Section V.C.3.a, below, contains a selection of

¹⁹⁰ Wisler Deposition pp 42-44; see also Defendant Masque Publishing Inc.'s Answers to Plaintiffs First Interrogatories, Answer number 13.

¹⁹¹ Defendant Masque Publishing Inc.'s Answers to Plaintiffs First Interrogatories, Answer number 13.

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1 photographs my team and I took of these discs when we acquired them. Section V.C.3.b, also
2 below, contains a selection of artwork that my team and I extracted from the discs, using similar
3 methods to those described above.

4 The CD-ROM discs my team and I analyzed were produced by the relevant defendant in
5 this case during discovery.

6 **3. Artwork Assets Utilized and Copied Playing the Games**

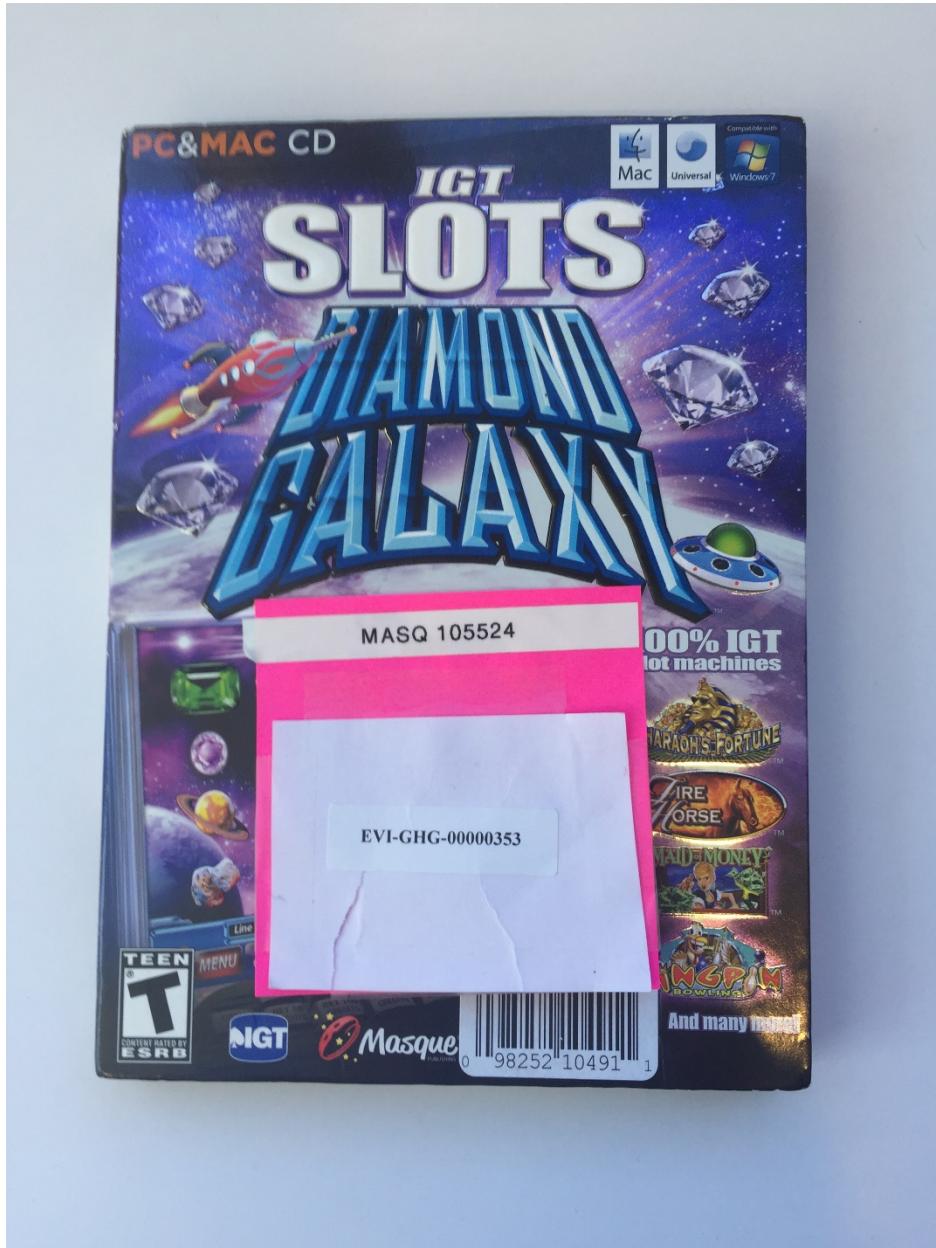
7 **Exhibit H** contains the full set of images that we found on the Masque discs, as well as
8 photos my team took of the packaging for the CD-ROM discs. The Exhibit contains a total of 183
9 images. Due to the volume of images, only a selected subset of these images are included below
10 in Subsections a and b.

11 **a. Photos of Masque Packaging**

12 The following are photos taken by my team of the packaging of several Masque discs. Note
13 the inclusion of GC2 Copyrighted Material.

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